

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
KALAMA BUILDING SUPPLY,

Appellant,

V.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCRB No. 82-9

PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF
LAW AND ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 400-040 of the General Regulations of respondent, came before the Pollution Control Hearings Board, David Akana, Member, at a formal hearing in Lacey, Washington, on March 25, 1982. Administrative Law Judge William A. Harrison presided.

Appellant appeared and represented himself. Respondent was represented by its attorney James D. Ladley.

Having heard the testimony, having examined the exhibits, and

EXHIBIT A

1 having considered the contentions of the parties, the Board makes
2 these

3 FINIDNGS OF FACT

4 I

5 Pursuant to RCW 43.21B.260, respondent has filed with the Board a
6 certified copy of its General Regulations and amendments thereto, of
7 which official notice is taken.

8 II

9 Respondent's Motion to Dismiss this appeal for untimeliness was
10 withdrawn on the record at hearing.

11 III

12 On December 8, 1981, at about 11:41 a.m., respondent's inspector
13 noticed a blue-gray colored plume arising from appellant's building
14 supply store in Kalama. After positioning himself, he observed the
15 plume which was coming from the stack of a wood-fired space heater,
16 and recorded opacities ranging from 35 to 60 percent for 5 and 3/4
17 minutes. After discussing the matter with Mr. Miller, the owner and
18 operator of the building supply store, the inspector issued a Field
19 Notice of Violation No. 6741 to Mr. Miller. Mr. Miller later received
20 a Notice of Violation assessing a \$250 civil penalty for the alleged
21 violation of Section 400-040 of the General Regulations of respondent.
22 From this, Mr. Miller appeals.

23 IV

24 Section 400-040 of the General Regulations of respondent makes it
25 unlawful for any person to cause or allow the emission of any air
26 contaminant for a period totalling more than three minutes in any one
27

1 hour which is of an opacity greater than 20 percent.

2 Section 400-130 of the General Regulations of respondent provides
3 for a penalty of up to \$250 per day for each violation of the General
4 Regulations.

5 V

6 Appellant, Mr. Miller, has been cited by respondent on two prior
7 occasions for opacity emissions from the same source. A civil penalty
8 in the amount of \$50 was assessed in each instance, and these
9 citations were not appealed.

10 VI

11 Appellant, Mr. Miller, is the sole proprietor of Kalama Building
12 Supply and operates that business by himself without employees. His
13 building supply business is affected by the general downturn now
14 occurring in the wood products industry. The leading product which
15 Mr. Miller sells in his building supply business is a wood burning
16 space heater of the type concerned here. Mr. Miller uses such a space
17 heater for the dual purpose of demonstrating his product to customers
18 and to heat his business premises. The cost of heating his business
19 premises with electricity would be difficult to meet from the present
20 income of the business. Mr. Miller has filed bankruptcy under Chapter
21 13.

22 More seasoned wood, though slightly more expensive, would
23 substantially reduce the smoke emissions from the wood burning space
24 heater. Mr. Miller is willing to buy and use well seasoned wood to
25 reduce smoke emissions.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Appellant violated Section 400-040 of the General Regulations of the respondent as alleged, on December 8, 1981, by allowing or causing an air emission of smoke in excess of the limits established by the Regulations.

II

Because of the economic circumstances of appellant, the civil penalty should be mitigated by suspension. The respondent is willing to accept an assurance from the appellant that these emissions will be discontinued after a reasonable period of time, which time period should be determined with a view to appellant's economic circumstances. Such an assurance of discontinuance should be agreed to. This means for enforcing the state clean air act is provided at RCW 70.94.435 which provides in pertinent part,

As an additional means of enforcing this chapter, the governing body or board may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter or of any ordinance, resolution, rule or regulation adopted pursuant hereto, from any person engaging in, or who has engaged in, such act or practice.

The respondent is also willing to suspend the civil penalty on this basis.

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III

Any Finding of Fact which should be deemed a Conclusion of Law, is hereby adopted as such.

From these Conclusions, the Board enters the following

ORDER

The \$250 civil penalty is affirmed but shall be suspended provided the following two conditions are met:

1. Appellant, Mr. Miller, will buy and use well-seasoned wood in his wood burning space heater to minimize smoke emissions.

2. Appellant, Mr. Miller, within thirty days of the receipt of this Order, shall request a written agreement from respondent under which he will assure the eventual discontinuance of smoke emissions such as the one involved here.

DONE AT Lacey, Washington, this 12th day of April, 1982.

POLLUTION CONTROL HEARINGS BOARD

William A. Harrison
WILLIAM A. HARRISON
Administrative Law Judge

1 BEFORE THE
2 POLLUTION CONTROL HEARINGS BOARD
 STATE OF WASHINGTON

3 IN THE MATTER OF)
4 KALAMA BUILDING SUPPLY,)

5 Appellant,)

6 v.)

7 SOUTHWEST AIR POLLUTION)
8 CONTROL AUTHORITY,)

9 Respondent.)
 _____)

PCHB No. 82-9

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

10 THIS MATTER, the appeal from the issuance of a \$250 civil penalty
11 for the alleged violation of Section 400-040 of the General Regulations
12 of respondent, having come on regularly for formal hearing on March 25,
13 1982, at Lacey, and appellant appeared through its owner John H. Miller
14 and respondent represented by its attorney James D. Ladley, with Admini-
15 strative Law Judge William A. Harrison presiding, and the Board having
16 reviewed the Proposed Order of the presiding officer mailed to the
17 parties on the 21st day of April, 1982, and more than twenty days
18 having elapsed from said service; and

1 The Board having received no exceptions to said Proposed Order and
2 the Board being fully advised in the premises, NOW THEREFORE,

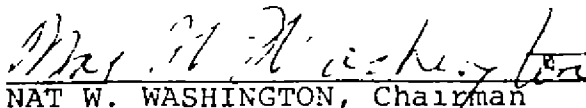
3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
4 Order containing Findings of Fact, Conclusions of Law and Order dated
5 the 21st day of April, 1982, and incorporated by reference herein and
6 attached hereto as Exhibit A, are adopted and hereby entered as the
7 Board's Final Findings of Fact, Conclusions of Law and Order herein.

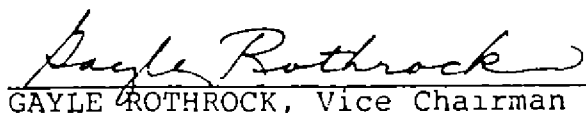
8 DONE this 30th day of June, 1982.

9 POLLUTION CONTROL HEARINGS BOARD

11 

12 DAVID AKANA, Lawyer Member

14 
15 NAT W. WASHINGTON, Chairman

17 
18 GAYLE ROTHROCK, Vice Chairman

19 

20 WILLIAM A. HARRISON
21 Administrative Law Judge